IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1431 OF 2005

WITH

CIVIL APPLICATION NO. 3520 OF 2005

Parvati Shankar Chawan,
since deceased
Smt. Sheetal Prakash Gawde & Ors. ..Appellants

versus

Parvati Shankar Ghag & Anr. ..Respondents

Mr. Suresh Gole for the Appellants.
Ms. Vidya Vyavahare for the Respondent No.1.

CORAM : D. G. DESHPANDE,J.

DATE : 23RD AUGUST,2005

ORAL ORDER :

1. Heard.

2. Appellants are the original plaintiffs,. They filed a B.C.C.C. S.C. Suit No. 1666 of 1996 for recovery of possession of the suit premises i.e. Room No.40 on the first floor of Progressive Building No. 15 at Chinchpokli, Mumbai, from the defendants. Original Plaintiff No.1 was Smt.

Parvati Shankar Chawan and the plaintiff No.2 was Rajaram Atmaram Kokam. Original defendants were Smt. Parvati Shankar Ghag and Gangadhar Sakharam Chawan, Defendant No.2 made a statement that he has no interest in the suit premises as it was handed over to the Defendant No.1 Parvati Shankar Ghag. Both the plaintiffs and the defendant Nos. 1 and 2 were close relatives.

3. The case of the plaintiff No.1 was that the plaintiff No.2 was the original tenant, he wanted to dispose of the suit room. Husband of the plaintiff No. 1 was interested in the suit room, he therefore approached Plaintiff No.2 and then after negotiations, husband of the plaintiff No.1 procured room for their residence from plaintiff No.2. Till 1962, original Plaintiff No.1 and her husband were residing in Room No. 39 of the said building. Husband of original Plaintiff No.1 approached the landlord for transfer of tenancy, landlord gave promise to consider the same but the tenancy was never transferred. Rent receipts continued to be issued in the name of the plaintiff No.2. According to the plaintiff, defendant No.2 was in unlawful possession of the suit premises and therefore she filed a suit. Defendant No. 1 was claiming title through defendant No.2 since 1995 on the footing that late Vatsalabai Chavan has acquired suit room

from the plaintiff No.2. The trial court framed as many as 13 issues and Issue Nos. 1 to 5 where the burden was placed on the plaintiffs were held against the plaintiffs, and Issue No. 6 about legality of possession of the defendant No.1 was held in her favour. Further Issue Nos. 7 and 8 were also held in the negative. Consequently the suit came to be dismissed. Hence, this Appeal.

4. Case of the Plaintiffs is most unnatural to believe or accept. If plaintiff No.2 had surrendered the tenancy and then there is no writing with the plaintiff No.1 to show that the landlord had ever consented to treat the plaintiff as tenant. There is no sufficient and convincing evidence about the so-called story of the plaintiffs that any agreement was executed.

5. Even after hearing Mr. Gole, at length, and going through the impugned judgment as shown by him, no finding can be given in favour of the plaintiffs - appellants. On the face of it the case of the plaintiffs is false and bogus. The suit is filed in 1996 for recovery of possession. Now possession can be recovered on the strength of title or previous possession. The plaintiffs have neither the title nor succeeded in proving the previous possession. In his cross examination, he is contradicted with

his evidence by way of affidavit and the contradiction was on material point, the relevant portion is reproduced herein below:

> *"I say that in the year 1962, when I gave the suit premises to late Shankar Chawan, I had executed an Affidavit cum declaration in favour of late Shankar Chawan, expressing my desire to transfer my tenancy of the suit premises in the name of late Shankar Chawan. It appears from records that till this day, the suit room still stands in my name. In the premises, I am also entitled to pray for a decree of their eviction and possession."*
>
> *"Now I am shown para 8 of my evidence, it is wrong to say that I have executed an Affidavit. I say that it was a simple writing on plain paper in respect of the suit premises for giving it for user and if I wanted to give up the tenancy right, it will be given to Mr. Chavan."*

The trial court, therefore, came to the conclusion that the plaintiff No.2 is not telling the truth and is running away from his own conduct. The Plaintiff no.2 is joined only for the sake of convenience by plaintiff No.1, but this joinder does not help the

plaintiff No.1 at all. The trial court found the case of the plaintiff No.1 was totally contradictory to the evidence. It was totally a new case.

6. From the evidence, it is clear that the plaintiff no.2 lost his tenancy rights in respect of the suit premises and that he did not do anything from 1962 to 1996 which is a gap of more than 25 years and this inaction on the part of the plaintiff No.2 for such a long period, totally falsifies his case. Therefore, trial court was justified in dismissing the suit of the plaintiffs. No interference is called for. The appeal is dismissed along with Civil Application.

23.8.2005 (D.G. DESHPANDE, J.)